ledged in the Supreme Court of Pennsylvania, March 9th 1871, and recorded in Deed Book J. A. H., No. 123, p. 442.

Here is an act quietly done, and unknown except to a few individuals, of historical interest, and of great beneficence, and fittingly crowns the honorable dealings of all the Penn proprietaries with their settlers and successors. For more than a century, few even in the legal profession have understood the precise nature of the title and the powers of the Penns to the soil in Pennsylvania; and they have always been so honorably represented as to give to settlers and purchasers entire confidence without inquiry into the wills, articles of agreement, and marriage settlements of the family, few of which were of record or accessible within the province or state, and were first got together and printed by William Henry Rawle, Esq., in 1870. It was not known until then what would be the disposition of the heir coming through a female branch, whether to attempt to take advantage of defects and omissions or to confirm titles made by his predecessors, because he was wholly unknown to us. The deed above recited sufficiently proves that to William Stuart, Esq., we owe thanks and gratitude, and that we should hold his name and memory in honor, in common with all the Penns in their relations with the people of Pennsylvania.

ELI K. PRICE.

## RECENT AMERICAN DECISIONS.

### *Supreme Court of Errors of Connecticut.*

### CHARLOTTE D. LORD *v.* TOWN OF LITCHFIELD.

The statute of 1702 with regard to gifts for charitable uses provides that all lands and estates that have been or shall be given by the General Assembly or by any town or person for the maintenance of the ministry of the gospel or for any other public and charitable use, shall for ever remain and be continued to such use, and shall be exempt from the payment of taxes. *Held*, that this statute did not constitute a contract between the state and either the donors or the donees of such charitable gifts, that the property so given should for ever be exempt from taxation, and that therefore a statute making it taxable in certain cases, was not unconstitutional.

If to be regarded as such a contract, a lease of the property for 999 years for a gross sum, without a reservation of rent, would be such a violation of the condition of the contract that the state would no longer be bound by it.

The case of *Landon* v. *Litchfield*, 11 Conn. 251, overruled. Also the cases of *Atwater* v. *Woodbridge*, 6 Conn. 223, and *Osborne* v. *Humphrey*, 7 Conn. 335.

The present suit was brought by the owner of lands claimed to be exempt from taxation under the Act of 1702, to recover money compulsorily paid for such tax. The land in question was the same land held in the case of *Landon* v. *Litchfield* to be exempt from taxation under that statute, and the sole question in the present case was as to its liability to taxation. An act had been passed in 1859, since that decision, making such lands taxable where conveyed to other parties and no longer productive of income to the original donee, as was the case with the lands in question. *Held*, that the judgment in the case of *Landon* v. *Litchfield* did not estop the defendants from claiming the lands to be taxable, 1st, because the record in that case did not show that that precise point was decided, and 2d, because the Act of 1859 made the question a different one, it then being as to the liability of the land to taxation under the law of that time and now as to its liability under the law of the present time.

A statement of the facts of a case by a judge of the Superior Court for the purpose of reserving the case for the advice of the Supreme Court, is not a part of the record in the case.

ASSUMPSIT for money paid, to recover the amount of certain taxes paid under compulsion and claimed to have been illegally laid. The Superior Court found the following facts.

The original deed from a committee of the towns of Hartford, Windsor, and certain inhabitants of Farmington, dated April 27th 1719, granted to the first settlers of the town of Litchfield, among other things, "three home lots with the divisions of land to be laid out thereunto, and the whole of said three lots to be three-sixtieth parts of the whole plantation, to be and remain for the uses following, and no other use and purpose whatsoever, namely,—one home lot, with the divisions and commons thereto pertaining, to be given and granted to the minister that shall be first ordained in the said plantation by the choice and approbation of the major part of the inhabitants thereof, to be and remain to him and his heirs for ever; one lot, with the divisions and commons, to be and remain for ever to and for the use and improvement of the said first minister and his successors in the work of the ministry in the said place; and the other of said three lots to be and remain for ever to be improved by the inhabitants of the said plantation to the best advantage, for the support and maintenance of the school for the well educating of the children in the said place."

In 1745, under the second clause of the foregoing extract, a piece of land situated on the east side of North street, in the village of Litchfield, containing thirty-six acres, was "surveyed out to the ministry."

At a meeting of the inhabitants of Litchfield, February 26th, 1753, it was "voted to give Rev. Judah Champion a call to settle among us in the ministry." Also "voted to give to Mr. Champion £2000 in old tenor money for his settlement, and £800 per annum old tenor money for his salary, provided he settle as a minister."

At a meeting holden June 14th 1753, it was "voted, to lease out so much of the parsonage right of land for nine hundred and ninety-nine years as to answer and pay the settlement already voted to Mr. Champion," and a committee of three was appointed to execute the lease.

The following lease to Mr. Champion was executed by the committee:—

"To all people to whom these presents shall come—Greeting: Know ye that we, Ebenezer Marsh, Edward Phelps, and Supply Strong, of the town and county of Litchfield, in the colony of Connecticut, being chosen and appointed a committee by the inhabitants of the said town to lease to the Rev. Judah Champion the home lot and twenty acres joining laid out on the right of land called the parsonage right, in said Litchfield, for and in consideration of the said Judah Champion's settling in the said town as a gospel minister: We, therefore, as committee aforesaid, for the consideration aforesaid, do demise, lease, and to farm let, to him the said Judah Champion, his heirs and assigns, for and during the full term of nine hundred and ninety-nine years from and after the 4th day of July, A.D. 1753, the said home lot and twenty acres joining laid out on the said right, and bounded according to the survey bill thereof as follows [describing it]. To have and to hold said demised and leased premises with all the privileges and appurtenances thereof unto him, the said Judah Champion, his heirs and assigns, to his and their own proper use, benefit, and behoof, for and during the full term of time aforesaid. And we, as committee aforesaid, do hereby covenant and promise to and with the said Judah Champion, his heirs and assigns, to warrant and defend the said leased premises and appurtenances to him the said Judah Champion, his heirs and assigns, during the full term of time aforesaid against all claims and demands. Witness our hands and seals, the fifteenth day of January, in the 27th year of his Majesty's Reign, George the Second of Great Britain, &c., King, Annoque Domini 1754."

Mr. Champion accepted the lease in part payment of his settlement, and held possession of the tract of land under it (continuing in the work of the ministry), from the date thereof to the time of his death, in October 1810. He devised the land to John R. Landon, who also went into possession of the same, and by sundry intermediate conveyances the title which Mr. Champion and Landon had to the land came to and vested in the plaintiff. The plaintiff's deed is dated May 3d 1858, and from that time to the present she has been the owner of the land.

All the clergymen who were settled in the town while it continued one ecclesiastical society, and all who have been settled in the first ecclesiastical society of the town since the same was divided into different societies, have been settled in the work of the ministry upon certain stipulated settlements and salaries, according to contracts made between the town or the first ecclesiastical society on the one hand, and said clergymen on the other, which salaries and settlements have been fully paid by the town and society, and received by said clergymen in full compensation for their services. Neither the town nor society receives, or has ever received, any annual income or rent from the premises.

In the year 1833, while said Landon was in possession of the land, the town laid a tax thereon against him, and caused the same to be collected of him. He immediately after brought an action against the town to recover back the money so paid. The case went to the Supreme Court, and is reported in 11 Conn. R. 251. In the present case the plaintiff set up in her pleadings that judgment and claimed it to be a bar to the present suit. The record, which was introduced in evidence, showed merely a declaration in general *assumpsit*, a plea of the general issue, and the clerk's record of the judgment. There was with the file a statement of the case by the judge of the Superior Court who heard it, and a reservation of sundry questions arising on the facts, the principal one being as to the liability of the land to taxation, for the advice of the Supreme Court; but it did not appear otherwise what was decided in the case.

In the several years mentioned in the plaintiff's bill of particulars in the present case the defendants laid a tax on the land against the plaintiff, and on the 4th day of December 1867, caused the sum of $141.81 to be collected of her in payment thereof, including interest and incidental expenses.

Upon these facts the court reserved the questions arising in the case for the advice of this court.

*Hubbard* and *Andrews*, for the plaintiff.

*O. S. Seymour* and *G. C. Woodruff*, for the defendants.

The opinion of the court was delivered by

CARPENTER, J.—The statute of 1859 provides that "whenever any ecclesiastical society, or any public or charitable institution, shall have leased or otherwise conveyed any real estate, from which said society or institution does not receive an annual income or rent, or where such conveyance is intended to be a perpetual conveyance, such estate shall not be exempt from taxation." The court below has found that neither the town of Litchfield, nor the ecclesiastical society, has ever received any annual income or rent from the property here in question. The case then is brought within the language of the act, and must be governed by it, unless the statute, so far as it was designed to affect this class of cases, is inoperative, for the reason that it impairs the obligation of a contract. In *Brainard* v. *Colchester*, 31 Conn. 407, it was held by this court that the act was not unconstitutional. We are not disposed to question the correctness of that decision. The reasons given for it, however, would seem to indicate that that case was not within the purview of the Act of 1702, inasmuch as the conveyance in that case defeated the end sought to be accomplished by the statute. A careful examination of the present case has led us to the conclusion that it stands substantially upon the same ground. We are aware that this question, in its application to this identical land, was decided in *Landon* v. *Litchfield*, 11 Conn. 251, in accordance with the plaintiff's claim. But that decision was by a divided court, and was virtually overruled by the case of *Brainard* v. *Colchester*. It is not, therefore, binding upon us, but we are at liberty to decide this case upon principle.

The statute of 1702, so far as it relates to the present inquiry, is as follows: "That all such lands, tenements, hereditaments, and other estates, that either formerly have been, or hereafter shall be, given and granted, either by the General Assembly of this colony, or by any town, village, or particular person or persons, for the maintenance of the ministry of the gospel in any

part of this colony, or schools of learning, or for the relief of poor people, or for any other public and charitable use, shall for ever remain and be continued to the use or uses to which such lands, tenements, hereditaments, or other estates have been or shall be given and granted, according to the true intent and meaning of the grantors, and to no other use whatsoever; and shall also be exempted out of the general lists of estates and free from the payment of rates."

It is obvious from an inspection of the statute that its chief object was to secure the estates therein named for the uses and purposes intended by the grantors, and to prevent their misapplication to other purposes: *Brainard* v. *Colchester*, *supra*; *New Haven* v. *Sheffield*, 30 Conn. 160. The exemption from taxation was a secondary matter, and clearly contingent upon the former provision. It has always been the settled policy of the state to exempt from taxation the property of all religious societies. Hence it was the obvious intention of the legislature to exempt it so long as it continued to the uses and purposes for which it was designed; and it is a fair inference that, whenever such property should be diverted from such use, the legislature intended that it should not be so exempt. In this case the lands granted remained in the hands of the society from 1719 to 1753. In the latter year the Rev. Mr. Champion was settled over the society, in consideration of a gross sum, £2000, and an annual salary of £800. The former sum was paid, in part at least, by a lease of the land in question for 999 years. They, therefore, during the continuance of the lease, parted with their whole interest in the property for a gross sum, and expended the proceeds in paying an obligation resting upon them; so that neither the land nor its avails produced an annual income to the society. If the land had been leased to other parties for cash, and the money had been used to pay an existing debt, it would hardly be claimed that the transaction was not a diversion. The case does not materially differ from the one supposed. The society had contracted to pay £2000, and leased the land in question to raise money for that purpose. The circumstance that the party to whom the money was due agreed to take the land in lieu of money, cannot change the nature or character of the transaction. It was doubtless supposed that the society had no power to sell, and that a conveyance in fee would work a forfeiture of the estate. Hence a long

lease was resorted to. Nevertheless, for all purposes involved in the present inquiry, it was a practical sale, and contrary to the letter and spirit of the Act of 1702. We think, therefore, notwithstanding the case of *Landon* v. *Litchfield*, that the implied condition contained in the act had not been kept, and consequently that the land ought not to be exempt from taxation. Such in effect is the decision in *Brainard* v. *Colchester*, and we may safely rest our decision upon the authority of that case.

But we think the constitutionality of the Act of 1859 can be vindicated upon higher grounds; and as the question is an important one, in which many towns in the state are particularly interested, we feel constrained to go further and express at length our views and conclusions upon that branch of the case. We are clearly of the opinion that the Act of 1702 is in no sense a contract. A public as well as a private statute may form the basis of a contract. In either case, as in contracts between individuals, there must be all the essential elements of a contract; —a subject-matter—parties capable of contracting—a good and sufficient consideration—and an actual contract or agreement of minds. If any one of these requisites is wanting, there is no more reason for holding the state bound by the transaction than there would be for holding an individual bound under similar circumstances.

It may be useful, in the first place, to inquire who is the party with whom the state is supposed to have made a contract? Was it with the grantors or the society? If the former, then, inasmuch as the immunity did not attach to the land until after the title passed from them to the society, it is manifest that the plaintiff is not in privity with either of the contracting parties; and being neither party nor privy to the contract, it is difficult to see what right she has to derive any advantage from it, or what reason she has to complain of its violation, if indeed it has been violated. If such a contract in fact exists, perhaps the heirs or successors of the grantors might, if a proper case should arise, insist upon the fulfilment of the contract by the state. But how is such a case to arise? The grantors parted with all their interest in the property absolutely. Exemption from taxation will not benefit them or their successors, and on the other hand taxation will not injure them. In fact they have not the slightest interest in the question. Again, regarding them as the party, what evidence is

there that exemption from the payment of rates had the slightest influence upon their minds? Their sole motive was to benefit the grantees. The donation in their hands would be slightly enhanced in value by the operation of the statute; but that was a mere incident, and there is hardly room for presuming that it had any perceptible influence. The property they parted with was the same in value to them whether taxable or otherwise; and we have no reason to suppose that they would have parted with it any sooner in the one case than the other. These considerations show pretty conclusively, in the first place, that there was no contract in fact with the grantors; and in the second place, if the transaction can in any sense be viewed in the light of a contract, that the plaintiff is a stranger to it and cannot enforce it.

But if it be claimed that the town or society is the other contracting party, then the plaintiff encounters another difficulty which is equally fatal to her claim; and that is this, that there is no consideration to support the contract. It will not be pretended that the state received any advantage, direct or indirect, which can be regarded as a sufficient legal consideration. The grantees parted with nothing of value, they contracted to do nothing, and there was no agreement, express or implied, on their part, which can be treated as a consideration for the undertaking of the state. It may be said that the consideration moved from the grantors. If it could be made to appear that the exemption was intended to induce gifts of this kind, and that the conveyance was actually made in consideration of such exemption, there would be force in this claim. But if the statute was not intended or designed for any such purpose, and the grantors parted with their property, as they certainly may have done, upon other considerations, independent of that, it would be going too far to hold that the grantors' deed was a sufficient consideration for the act of the state. One reason is that neither party, so far as we know or can know, in the day and time of it looked upon the transaction in that light. The exemption was purely a gratuity, given and accepted as such. To give it the force and validity of a contract, beyond the reach of subsequent legislative control, is going farther than any adjudged case has gone, aside from the cases above referred to. Before we can give such effect to a statute we ought to be satisfied, without the aid of presumptions, that the parties

so intended it. No such intention appears in this case, and the presumptions are the other way.

But there are other considerations, arising from the motives which prompted the Act of 1702, and from the language of the act itself, which confirm us in the view we take of this question. It will be conceded that the design of the legislature was to benefit, not the grantees of the society, but the society itself. It would seem to follow, as a necessary consequence, that the exemption attached to the title of the society, and not to the land. If therefore the society sell the land, and with the avails create a permanent fund, from which an annual income is derived, the fund should be exempt from taxation and not the land. Otherwise the manifest intention of the legislature would be defeated. It will hardly be claimed that both the fund and the land should be exempt, as that would be a double exemption, neither intended nor contemplated by the legislature. But suppose the society, instead of investing the money in a permanent fund, exhaust it, as in this case, by the payment of a debt. In such a case the exemption must attach to the land or nothing. If it does so attach, and not in the case of a permanent investment, then we come to this result, that the land would or would not be exempt, according as the society used its avails for one purpose or another. It would seem to be trifling to impute to the legislature any such intention. The immunity, if it attached to the land at all in the hands of the purchaser, cannot be affected by any subsequent act of the society. It may be suggested in the case last supposed, that the society received all the benefit the legislature intended, in the enhanced price of the land, and that the purchaser, by paying a larger price, has purchased the exemption, and therefore it is reasonable that he should enjoy it. A perfect answer to this is, that the legislature did not contemplate a sale for any such purpose, but, on the contrary, the chief object was to prevent such a disposition of the property. They intended that land, or other estates so given, should be and remain a permanent source of revenue. That intention is defeated in the case supposed, as we have attempted to show, and therefore the purchaser has no legal or equitable claim to the exemption.

But again, the statute in terms applies to land previously given, as well as to that given subsequently. It cannot be successfully

claimed that any contract exists in respect to such donations; certainly none with the donors. This would seem to be too clear for argument. However this may be, the point was substantially decided by the Supreme Court of the United States, in *Armstrong* v. *The Treasurer of Athens County*, 16 Peters 281. It appears in that case that in the year 1804 the legislature of Ohio by statute exempted from taxation *for ever* certain lands previously granted by Congress for the purpose of founding a university in that state. In 1826 the legislature authorized the board of trustees to sell the land in question upon certain terms, but the act was silent in respect to the matter of taxation. The court held, affirming the decision of the Supreme Court of Ohio, that the land was taxable in the hands of the purchasers. If this point is established it is certainly true that the act in question is not a contract in respect to a part of the property therein referred to. In respect to the other part we ought to give the statute the same interpretation, unless its language, or the nature of the case, requires a different construction. We see no reason for construing the statute as meaning one thing when applied to one piece of property and another thing when applied to other property.

There is another feature of this statute which deserves particular attention. It expressly applies to all property which had been, or which should thereafter be, granted by the General Assembly of this state. Now upon the supposition that the contract contended for was with the grantors,—and that is the ground of the decisions of this court in *Atwater* v. *Woodbridge*, 6 Conn. 223, and *Osborne* v. *Humphrey*, 7 Conn. 335, cases upon which *Landon* v. *Litchfield* rests,—we are driven to the necessity of holding that the state entered into a contract *with itself*, and pledged its faith *to itself*, that such property should never be taxed. If the statute applied only to cases of this description, no one would contend that it was a contract which tied up the hands of succeeding legislatures.

On the whole, we think it reasonable, and the only reasonable course, that the statute, in relation to all the property named in it, should receive the same construction; that the legislature intended to place all such property upon the same footing. That can only be done by rejecting the idea of a contract.

We will close this branch of the case by a reference to the language of Judge BISSELL, in *Parker* v. *Redfield*, 10 Conn. 495.

In speaking upon this question, and in relation to the cases of *Atwater* v. *Woodbridge*, and *Osborne* v. *Humphrey*, he says:— "Were this now an open question we might well doubt whether it be in the power of one legislature by a general law to tie up the hands of succeeding legislatures; and whether a statute, exempting a particular species of property from taxation, is in the nature of a contract of perpetual obligation." It is true he yielded to the authority of those cases; but as that authority is somewhat shaken by *Brainard* v. *Colchester*, we have felt at liberty to examine the question upon principle, and upon such examination, being satisfied that those decisions are not founded in correct principles, we feel constrained to disregard their authority and to declare the law to be otherwise.

The plaintiff claims that the judgment of the Superior Court in *Landon* v. *Litchfield* estops the defendants from making this defence. To render a former judgment conclusive on any matter it is necessary that it should appear that the precise point was in issue and decided, and that this should appear from the record itself: *Kennedy* v. *Scovill*, 14 Conn. 61, and authorities there cited. The record in that case consists of the declaration, the plea, and the judgment. The declaration was in *assumpsit*, containing the common counts only, the plea was the general issue, and judgment was finally rendered on a default. It does not appear from the record that the question now involved was put in issue, much less that it was tried and determined. The finding of the Superior Court, which was merely for the purpose of taking the opinion of the Supreme Court upon certain questions of law therein raised, is not, strictly speaking, a part of the record. But even if it is, still it does not appear that the question was tried and decided in the Superior Court. A judgment by default determines nothing except the plaintiff's right to recover in that action. Notwithstanding that judgment, it was competent for the defendants at any time to assert their right to tax this property, and, if that right was disputed, to have the question directly presented and judicially determined: *Standish* v. *Parker*, 2 Pick. 20; *Arnold* v. *Arnold*, 17 Pick. 4. But another conclusive answer to this claim is, that the statute of 1859 has materially changed the legal aspect of the question. The most that can be claimed for the former judgment is, that the land was not taxable as the law then stood. The question involved in the

present suit is the right to tax the property as the law now stands.

We advise the Superior Court to render judgment for the defendants.

In this opinion the other judges concurred.

The question of the perpetual exemption of specific property by statute, or legislative contract, from taxation is one of more essential importance to governmental functions, than, upon first impression, would be likely to be apparent to most legally educated persons even. It is one of those special privileges, or exemptions, attached to property, which could not be made universal or even general, without destroying the very existence of government. For the duties of government, being, as the very term implies, of a compulsory character, and naturally involving the outlay of large sums of money, could not possibly be accomplished without the possession of money and its expenditure. And no government can possibly have either money, or credit, without revenue, or revenue without taxation, or taxation without property liable to taxation. It may not be indispensable, that all public revenue be raised by direct taxation, but that must at least be in the power of government, in order to give it either credit or independence. Hence it will be very obvious, that the perpetual exemption of any property in this way, from taxation, must be an invidious privilege, inasmuch as it cannot be so extended as to become universal, without trenching upon the very vitality of the government itself.

We may, therefore, very well comprehend, that such exemption, when granted, should receive a very strict construction; inasmuch as it is not only in derogation of public right, but, in principle, destructive of it. We are not surprised, therefore, that those persons, who hold property under any such exemption, should attempt to keep up, in the public conscience, a constant sense of the extreme importance and inviolability of such special exemptions. But we conjecture, that it might become rather a thankless, if not a hopeless task, to inspire any very great and general veneration for any such special and invidious privilege, provided it were confined to a few persons, or to some particular class. That, be sure, would not afford any just ground to treat it with less respect, where it existed and was clearly a condition of the title to the property. But it may tend to show, that whatever enthusiasm there may exist in the public mind in favor of the fullest vindication of such special exemptions, is based more upon the popular interest in the question than upon the public sense of justice, although that might uphold it within its just limits.

We publish this opinion because it manifests the manly disposition of a very able court, to bring this special and invidious exemption within the narrowest possible, and at the same time just limits. It is, we think, specially creditable to the Supreme Court of Connecticut, that so large a proportion of its recent decisions manifest so marked a disposition to bring special and invidious privileges, in which only a few persons at most can participate, within very narrow limits by the strictest construction consistent with the terms of the title deed, whether of private contract or legislative grant, and at the same time, as far as possible, not allow the processes of judicial administration to be defeated, or embarrassed by merely technical refinements; in other words, manifesting a disposition to maintain the fair and just merits of causes, in becom-

ing ingenious, rather how to do, than how not to do the thing, which moral justice demands. To this end the court have overruled all their former decisions, considerably numerous, and of many years' standing, upon which the exemption of certain property from taxation rested. These cases are referred to in the briefs of counsel and the opinion of the court. *Landon* v. *Litchfield*, 11 Conn. 251, was decided in regard to the very same property in question in the present case. We had occasion to examine these Connecticut cases at an early day, in the case of *Herrick* v. *The Town of Randolph*, 13 Vt. Reports 525. And although we supposed at that time they might possibly be maintained, upon the ground that the title to the property was acquired while the exempting statute was in force, and so the exemption was made to inhere in the very title of the property itself as one of its essential conditions, we are now satisfied, that the exempting statute should not be held to attach any such permanent exemption from taxation by virtue of the estate or property being acquired during the operation of a general statute, creating the exemption. Such a general statute, exempting certain property from taxation should not receive any more extended operation, because it is expressed to be "for ever," than if it had been expressed in general terms. The legislature has no power to give its general enactments any more extended force than they take by the use of terms, unlimited in point of duration. The same or any future legislature may repeal, or modify them, unless they are of the nature of contracts. To have this force the exemption must have been granted upon a pecuniary consideration, so as to constitute part of the price of the grant, *i. e.* have made it more valuable.

The case of *Landon* v. *Litchfield*, 11 Conn. 251, was decided by a divided court, upon the ground that an early Colonial Act, 1702, exempting estates held for charitable uses, from taxation, attached a condition to the estate in the hands of a lessee for the term of 999 years, reserving no annual rent, but accepting a gross sum in full of all rents. This decision was based upon the virtual assumption, that the privilege of exemption from taxation of estates conveyed to charitable uses, while the statute exempting them from taxation, was in force, attached to the land itself, making it thereby more valuable in the hands of the grantee and that it must be transmissible to others with the same privilege, or else the holder failed to realize the full benefit of the privilege. The later cases, decided by the same court, treat this exemption as one of a very obnoxious character, and therefore deserving a very strict construction: ELLSWORTH, J., in *The Town of New Haven* v. *Sheffield*, 30 Conn. 171. And in *Brainard* v. *Colchester*, 31 Conn. 407, the case of *Landon* v. *Litchfield* is virtually overruled, the court making, as it seems to us, the true distinction upon this point of exemption of property from taxation: 1. That it should receive a strict construction and not be extended further than the fair import of the words require. 2. That when the exemption is based upon the use to which the estate is conveyed, it shall not be construed as attaching to the land beyond the time of its appropriation to that use. 3. That to attach a perpetual exemption of lands or real estate from taxation, it must form one of the elements of a contract or grant on the part of the state: as in *State of New Jersey* v. *Wilson*, 7 Cranch 164, where land was granted by the state to the Indians, upon the express condition to remain perpetually exempt from all taxes, and it was held an essential element of the grant and of the title, which the state could not thereafter be permitted to pass any law abridging or in any way qualifying or interfering with. This principle forms the basis of

decision in *Herrick* v. *Randolph*, *supra*, and is founded upon impregnable principles, which all sound lawyers must always regard as rendered inviolable by the United States Constitution. And this is the ground upon which the Connecticut court now found themselves; and which is the most which can be conceded to any state-statute exempting property from taxation.

Strictly speaking, we think, an exemption of property from taxation, on the ground that the state granted the title and the exemption for a consideration, should be restricted to taxes imposed upon the property itself, as it is upon real estate, or personalty sometimes, set in the list at a valuation. Such an exemption should never be construed to extend to income derived from such estate and for which the owner is taxed personally. But the abhorrence of the people against what they call double taxation has sometimes led to the exemption of all the issues and incidents of such property, even to the buildings erected upon land, having such an exemption from taxation.

It has always seemed to us that the true principles on this subject are contained in the opinions of THOMPSON, J., in *Weston* v. *The City of Charleston*, 2 Pet. S. C. 449, and that of PARKER, Ch. J., in *Brewster* v. *Hough*, 10 N. H. 138.

I. F. R.

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## *Supreme Court of California.*

### VANDALL ET AL. *v.* SOUTH SAN FRANCISCO DOCK COMPANY.

A corporation has no other powers than such as are specifically granted in its charter, or such as are necessary for the purpose of carrying into effect those expressly granted.

A corporation formed "to buy, *improve*, lease, sell, &c., real estate," may expend its funds for any purpose the direct and proximate tendency of which is to enhance the market value of its land, though the money is not expended on the land itself, *e. g.*, it may assess its stockholders for aid to a railroad which does not touch its lands, but which by giving increased facilities of access enhances their value.

The word "improve" used in such connection with real estate means to enhance its market value.

THIS was an action brought to restrain the defendant from selling the shares of stock held by the plaintiffs under an assessment made by the trustees of the company.

The defendant is a corporation organized under an amendment made in 1864 to the general Incorporation Act, stat. 1863, p. 149, and the plaintiffs are stockholders of the corporation.

The corporation was formed "to buy, *improve*, lease, sell, and otherwise dispose of real estate" in and near South San Francisco; "also, to build water front protection, slips, docks, piers, wharves, warehouses, and otherwise improve such property as may be obtained by the company." The company purchased